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July 8, 2016

The Honorable Denise Cote
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10277

RE: Hector Ortiz v. City of New York et al
Civil Action No. 15 CV 2206

Dear Judge Cote:

I am counsel for plaintiff and write to oppose defendants' motion to preclude the plaintiff's witness, Dr. Gabriel Dassa, from testifying as an expert witness. Today plaintiff sent defendants' counsel a list of cases in the last four years that Dr. Dassa has testified in as well as the amount that Dr. Dassa will be compensated, thereby complying with the requirements of Rule 26(a)(2)(B). Moreover, Dr. Dassa is a practicing orthopedist with over twenty years of experience. He has stated the bases and reasons for his opinions in his report that was submitted to defendants which plaintiff believes would survive a Daubert motion.

Defendants' request for preclusion of an expert is a drastic remedy, applied only when the party's conduct represents flagrant bad faith and callous disregard of the Federal Rules. See Sommer v. Davis, 317 F.3d 686 (6th Cir. 2003); Crump v. Versa Products, 400 F.3d 1104 (8th Cir. 2005) (expert testimony allowed where plaintiff not prejudiced by alleged inadequate disclosure of defendant's experts). In fact, any such defect should be remedied by an amendment to plaintiff's disclosures. See Thompson v. Doane Pet Care Co., 470 F.3d 1201 (6th Cir. 2006); Griffith v. Central Motors Corp., 303 F.3d 1276 (11th Cir. 2002) (motion to exclude expert's testimony based on inadequate disclosure denied where party never moved for order requiring more detailed disclosure); Ford ex rel. Estate of Ford v. Garcia, 289 F.3d 1283 (11th Cir. 2002) (motion to exclude based on failure to provide expert report denied where party never moved to compel production). Therefore, defendants' motion to preclude Dr. Dassa as an expert witness should be denied.

Sincerely,

_____/s/_____
Corey Lee
Attorney for Plaintiff Hector Ortiz